APPENDIX

Supreme Court of the United States

OCTOBER TERM 1974

No. 73-6935

MARCEL YOUAKIM ET. AL.,

Appellants

—*v.*—

JEROME MILLER, ET. AL.,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT FILED JUNE 22, 1974
PROBABLE JURISDICTION NOTED MARCH 17, 1975

Supreme Court of the United States

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INDEX

ITEM	Page
Citation to Decision Below	1
Structural List of Relevant Docket Entries	1
Stipulation to File Second Amended Complaint, Filed January 21, 1974	3
Notice of Filing Second Amended Complaint Verified for Injunctive Relief, Filed January 21, 1974	4
Plaintiffs' Second Amended Complaint Verified for Injunctive Relief, Filed January 21, 1974	5
Defendants' Motion to Strike and Dismiss Complaint to Stand as to Second Amended Complaint, Filed April 2, 1973	38
Motion to Convene Three-Judge District Court, Filed April 16, 1973	40

ITEM	Page
Order Designating the Honorable Paul Stevens, Circuit Judge, Honorable Abraham L. Marovitz, District Judge, and Honorable Philip W. Tone, District Judge, to serve as Members of a Three-Judge District Court, Filed May 25, 1973	41
Affidavits of Frank Kopecky and Ralph Hanebutt in Support of Defendants' Motion to Dismiss or Alternatively for Summary Judgment, Filed January 8, 1974	42
Plaintiffs' Motion to Strike Certain Portions of January 8, 1974 Affidavit of Frank Kopecky in Support of Defendants' Motion for Summary Judgment, Filed January 24, 1974	45
Everett McLeary Affidavit in Opposition to Defendants' Motion to Dismiss or Alternatively for Summary Judgment, Filed January 24, 1974	48
Memorandum of Decision of the United States District Court for the Northern District of Illinois, Eastern Division, reported at 374 F. Supp. 1204 (12/28/74)	50
Notice of Memorandum of Decision Granting Summary Judgment to Defendants	61
Plaintiffs' Notice of Appeal to the Supreme Court of the United States, Filed April 23, 1974	62
Order of the Supreme Court of the United States granting motion for leave to proceed in forma pauperis and noting probable jurisdiction, March 17, 1975	63

Citation to Decision Below

The Decision of the Three-Judge District Court for the Northern District of Illinois, Eastern Division, from which this appeal is taken is reported at 374 F. Supp. 1204, and is reproduced below in this Appendix.

Structural List of Relevant Docket Entries

1/21/74	Filed Stipulation (to file Second Amended Complaint).
1/21/74	Filed Plaintiffs' Second Amended Complaint Verified for injunctive relief
1/21/74	Pursuant to Stipulation, leave is granted to file second amended complaint verified for injunctive relief. Tone, J.
4/ 2/73	Filed Defendants' notice of filing motion with Motion to Strike and Dismiss Complaint. (To stand as to Second Amended Complaint.)
4/16/73	Filed Plaintiffs' Motion to Convene Three-Judge District Court.
5/25/73	Filed Order Designating the Honorable John Paul Stevens, Circuit Judge, Honorable Abraham L. Marovitz, District Judge and Honorable Philip W. Tone, District Judge to serve as members of a Three Judge Court.
1/ 8/74	Filed Defendants' Amended Memorandum of Law in Support of Motion to Strike and Dismiss. (Affidavits of Frank Kopecky and Ralph Hanebutt in Support of Defendants' Motion to Dismiss or Alternatively for Summary Judgment attached to Memorandum.)
1/24/74	Filed Plaintiffs' Motion to Strike certain portions of Affidavit of Frank Kopecky filed January 8, 1974 in support of Defendants' Motion to Dismiss or Alternatively for Summary Judgment, and two copies.

RELEVANT DOCKET ENTRIES (Continued)

1/24/74	Filed Affidavit of Everett McLeary in opposition to Defendants' Motion to Dismiss or Alternatively for Summary Judgment, and two copies.
1/25/74	Hearing on Defendants' Motion to Dismiss held before Three-Judge Court. Motion taken under advisement. Tone, J.
2/28/74	Enter Memorandum of Decision (draft) Tone, J.
4/23/74	Filed Notice of Filing; Plaintiffs' Notice of Appeal to the Supreme Court of the United States. pd/ $5.00
6/ 5/74	Filed Plaintiffs' Notice of Filing.
6/ 5/74	Filed Plaintiffs' request to certify and transmit records to the United States Supreme Court with Stipulation attached.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No 73 C 635

[Filed January 21, 1974]

MARCEL AND LINDA YOUAKIM, ET. AL., PLAINTIFFS

—vs—

JEROME MILLER, ET. AL., DEFENDANTS

STIPULATION (TO FILE SECOND AMENDED COMPLAINT)

It is hereby stipulated by and as between the parties, by their respective counsel that:

1. Pages 95-97 of the Illinois Department of Children and Family Services Placement Manual contains regulations which are germane to this case.

2. The Verified Complaint is amended to add the above regulations to the allegations of paragraphs 1, 4, 10(G), and 55(E).

3. Except for the changes set out in (2) above, the Second Amended Complaint is identical to the one now before the court.

4. If leave of Court is granted to file the Second Amended Complaint, Defendants will not object.

5. All of the pleadings, briefs and arguments heretofore addressed to the Verified Complaint shall stand as to the Second Amended Complaint.

Respectfully submitted,

/s/ Richard L. Ryan
RICHARD L. RYAN
Special Assistant
Attorney
General, Illinois
One of the Attorneys
for Defendant

/s/ Patrick A. Keenan
PATRICK A. KEENAN
DePaul Law Clinic
Attorney for Plaintiffs

[Title Omitted in Printing]

NOTICE OF FILING SECOND AMENDED COMPLAINT VERIFIED

[Filed Jan. 18, 1974]

[Caption Omitted in Printing]

TO: William J. Scott
Attorney General of Illinois

PLEASE TAKE NOTICE that on the 18th day of January, 1974, we filed the attached SECOND AMENDED COMPLAINT VERIFIED, RESPONSE TO DEFENDANTS' AMENDED MEMORANDUM OF LAW OF JANUARY 8, 1974, IN SUPPORT OF MOTION TO STRIKE AND DISMISS and STIPULATION with the clerk of the United States District Court for the Northern District of Illinois, Eastern Division, of the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois.

/s/ Patrick A. Keenan
DePaul Law Clinic
Attorney for Plaintiffs

[Proof of Service Omitted]

SECOND AMENDED COMPLAINT VERIFIED FOR INJUNCTIVE RELIEF

[Filed January 21, 1974]

Civil Action No. 73-635—Three Judge Court

[Caption Omitted in Printing]

PRELIMINARY STATEMENT

1. This is a civil rights class action wherein Plaintiffs seek a permanent injunction barring the State Director of the Illinois Department of Children and Family Services and his successors, employees, or agents, and all other persons in active concert and participation, from enforcing, applying, or executing Illinois Revised Statutes, Ch. 23, §§ 2212.05 and 2212.17 (1971) and Illinois Department of Children and Family Services Placement Manual, Ch. 3, § 5 at 95 through 97 (1972) as written, because said statutes and regulations violate equal protection of the law as guaranteed the Plaintiffs by the 14th Amendment to the United States Constitution. Said statutes and regulations authorize federally-subsidized foster care payments for foster parents who are unrelated to their foster children but deny said payments to Plaintiffs, who are foster parents of minor wards of the State—foster children—related to them.

JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), (4) which provide for original jurisdiction of this Court in all suits authorized by 42 U.S.C. § 1983 to redress the deprivation under color of State law of any right, privilege or immunity secured by the Constitution of the United States.

3. This suit concerns the denial by Defendants of equal protection of the law as guaranteed the Plaintiffs by the Fourteenth Amendment to the United States Constitution.

THREE-JUDGE COURT

4. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. § 2281, 2284 since Plaintiffs seek an injunction to restrain the Defendant, who is a state officer, from the enforcement, application and execution of State statutes (Ill. Rev. Stats., Ch. 23 §§ 2212.05, 2212.17) and regulations (Illinois, Department of Children and Family Services Placement Manual, Ch. 3, § 5 at 95 through 97), of statewide applicability on the grounds that said statutes and regulations are in violation of the Constitution of the United States.

PLAINTIFFS

5. Plaintiffs, Marcel Youakim and Linda R. Youakim, husband and wife, are citizens of the United States and have been residing in Des Plaines, Cook County, Illinois, since 1970. They are and have been the foster parents of Linda Youakim's brother, Timothy Robertson since January 7, 1972, and of her sister, Mary Lou Robertson since May 20, 1972. Plaintiff Marcel Youakim is related to Timothy and Mary Lou only by marriage.

6. Plaintiff, Timothy Robertson, is a minor citizen of the United States and has been living with his foster parents, Marcel and Linda Youakim in Des Plaines, Cook County, Illinois, since 1972. He is eight years old and a ward of the State of Illinois.

7. Plaintiff, Mary Lou Robertson, is a minor citizen of the United States and has been living with her foster parents, Marcel and Linda Youakim in Des Plaines, Cook County, Illinois, since 1972. She is ten years old and a ward of the State of Illinois.

8. Plaintiff, Larry Robertson, is a minor citizen of the United States and is and has been living in foster care facilities in the State of Illinois since May, 1969. He is thirteen years old and a ward of the State of Illinois. He does not now live with any other members of his family.

9. Plaintiff, Sherry Robertson, is a minor citizen of the United States and is and has been living in foster care facilities in the State of Illinois since May, 1969.

She is fifteen years old and a ward of the State of Illinois. She does not now live with any other members of her family.

STATUTES AND REGULATIONS CHALLENGED

10a. Illinois law generally provides for payments to foster parents who care for children who are wards of the State. The homes of such foster parents are defined by statutes which state in relevant part:

> "Facility for child care" or "child care facility" means any person, . . . who or which receives or arranges for care of placement of one or more children, *unrelated* to the operator of the facility. Dept. of Children and Family Services. Ill. Rev. Stats., Ch. 23, § 2212.05 (1971)
>
> and
>
> "Foster family home" means a facility for child care in residences of families who receive no more than 8 children *unrelated* to them, ...
> Ch. 23, § 2212.17 (emphasis added) (Entire texts set out in Appendix A.)

The statutory scheme does not provide for payments to foster parents caring for minor wards of the State who are related to them.

10b. Regulations of the Illinois Department of Children and Family Services provide for payments to foster parents who care for children unrelated to them who are wards of the State. The regulatory scheme does not provide for foster parents caring for minor wards of the State who are related to them. The policy of non-payment to foster parents caring for children related to them states in relevant part:

> The Department has no statutory authority to pay relatives for care of children. Ill. DCFS Placement Manual, Ch. 3 § 5 at 97 (Entire text set out in Appendix F.)

The regulations however provide that payments may be made to foster parents caring for children related to

them at an amount equal to those made to foster parents caring for children unrelated to them, as an exception to policy. (See Appendix F)

DEFENDANTS

11. Defendants, Jerome Miller, is the director of the Department of Children and Family Services. As such, he is the state official responsible for administering the Department of Children and Family Services Act which contains the challenged statutes and authorizes the challenged regulations, and for supervising the day-to-day operation of said Department.

12. Defendant Illinois Department of Children and Family Services acting pursuant to State law, and its Director, Jerome Miller, perform the following functions, inter alia:

a) established rules and regulations concerning . . . foster care;
b) accept for care and placement in foster homes children adjudicated wards of the state;
c) inspect and license foster homes;
d) authorize payment to foster parents caring for children unrelated to them.
Ill. Rev. Stats., 1971, ¶ 23 § 5005(4) (Statutes set out more fully in Appendix B.)

CLASS ACTION

13. The named Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a), (b)(2) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. The members of the class similarly situated are:

(i) all persons who maintain foster children related to them in their home and are refused full foster care payments because of said statutes and regulations.
(ii) all wards of the State (foster children) placed in the homes of foster parents to whom they

are related and who are denied payments because of said statutes and regulations.
(iii) all wards of the State (foster children) unable to live with their relatives who cannot afford to accept them as foster children without full State subsidy—the same State subsidy as they receive while placed with non-relatives.

The requirements of Rule 23 are met in that: the class is so numerous that joinder of all members is unpracticable; there are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; the representative party will fairly and adequately protect the interests of the class; and the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate injunctive relief with respect to the class as a whole.

FACTS

14. Plaintiffs Timothy, Mary Lou, Larry and Sherry Robertson, were made wards of the State of lIlinois in May, 1969; and categorized by State officials to be foster children.

15. As a result of the classification of the children as foster children, they have been and are now placed in various State approved foster homes and foster care institutions.

16. Each of the State approved homes and foster care institutions receives foster care payments for caring for said children, except that Plaintiffs Youakim do not receive State foster payments.

17. On or about January 7, 1972, the home of Plaintiffs Marcel and Linda Youakim was approved by the Defendants as a proper placement facility, and said Plaintiffs, related foster parents, accepted for foster care, Plaintiff Timothy Robertson.

18. In the progress of getting their home licensed as a State-approved foster care facility, Plaintiffs, related foster parents asked a social worker employed by Defendants Miller and the Illinois Department of Children and Family Services at the Defendants' offices at

4320 West Montrose, Chicago, Illinois, whether they would receive regular foster care payments.

19. The social worker at that time told Plaintiffs they would not receive the regular foster care payments because the law and policy denies these payments to related foster parents. Upon consultation with their counsel, Plaintiffs believe the foregoing to be an accurate statement of the Illinois law and policy.

20. Notwithstanding Defendants' refusal to grant the regular foster care payments to Plaintiffs, Defendants tendered, and Plaintiffs on January 7, 1972 entered into, a form "Home Placement Agreement," and accepted Timothy for foster care. A copy of this agreement is attached hereto and made part hereof (Exhibit I). The agreement was signed by all parties.

21. Said Home Placement Agreement is identical to that used by Defendants in approving and subsidizing approved foster homes, except as follows:

(i) The paragraph which provides that foster parents will be subsidized has been crossed out.
(ii) The word "foster" has been crossed out in thirteen places.
(iii) The word "relatives" is inserted in two places. (See Exhibit I).

22. On or about May 20, 1972 Plaintiff, minor ward of the State, Mary Lou Robertson, was similarly accepted for foster care by Plaintiffs Marcel and Linda Youakim, related foster parents.

23. Plaintiff related foster parents are informed and believe that their foster daughter, Plaintiff Mary Lou Robertson, has been removed from several foster homes during the past three years, and further, that Mary Lou is considered to have a "behavior problem" which is the cause of frequent moves.

24. It is Plaintiffs' opinion that Mary Lou does not have a behavior problem when living with them, and that she is happy and well-adjusted in their home.

25. Plaintiff related foster parents are informed and believe that they are providing their foster son Timothy

with foster care of a quality equal to or better than the care he has received and would receive from foster parents unrelated to him. The basis for the information and the grounds for this belief are set out in the paragraphs following.

25(a) Plaintiff Timothy has difficulty breathing.

25(b) Prior to Timothy's placement with his present foster parents, Timothy said he had not received regular medical care for his condition.

25(c) Plaintiffs Marcel and Linda Youakim have, at great out-of-pocket expense, arranged for necessary medical care including the removal of Timothy's tonsils and adenoids.

25(d) Timothy's placement with Plaintiffs Youakim as his foster parents is *prima facie* the best placement for him because the guardian, Defendant Miller, has the legal duty to provide foster home placement that is in the best interests of the foster child. Presumably, the present placement is the best one available.

26. Plaintiffs are informed and believe that they are providing their foster daughter, Mary Lou with foster care of a quality equal to or better than the care she has received and would receive from foster parents unrelated to her. The basis for the information and the grounds for this belief are set out in the following paragraphs:

26(a) Mary Lou's teeth are not straight.

26(b) Prior to Mary Lou's placement with her present foster parents, Mary Lou said she had not received any dental or orthodontic care for her condition.

26(c) Plaintiffs Marcel and Linda Youakim have arranged several trips to an orthodontist for necessary dental care.

26(d) Mary Lou's placement with Plaintiffs Youakim as her foster parents is *prima facie* the best placement for her because the guardian, Defendant Miller, has the legal duty to provide foster home placement that is in the best interests of the foster child. Presumably, the present placement is the best one available.

27. Based on the above allegations, Plaintiffs believe it is in the best interests of Timothy and Mary Lou to live with them since, because they are related to their

foster children, they are extraordinarily interested in their welfare, and determined to provide them the best quality care possible.

28. Because of Defendants' refusal to provide regular foster care payments, Plaintiff related foster parents have incurred substantially greater personal expense in caring for the foster children then similarly situated unrelated foster parents who receive the regular payments.

29. The amount of said expense borne by Plaintiff related foster parents has become so great that Plaintiffs are informed and believe and fear that they will be unable to continue providing foster care for the foster children unless Defendants grant payments in the amount equal to that paid to unrelated foster parents.

30. The refusal of Defendants to provide regular foster care payments to Plaintiff related foster parents has precluded Plaintiffs Youakim from even considering accepting for foster care the other family members, Plaintiff Larry Robertson (age 13) and Plaintiff Sherry Robertson (age 15), both wards of the State presently residing in other foster care facilities.

30(a) Sherry is presently placed with unrelated foster parents.

30(b) Larry is presently placed in an orphanage.

31. Plaintiff related foster parents are informed and believe that the best interest of all four children would be served if they could all live together in a family setting. Defendants' refusal to grant Plaintiffs foster care payments makes this impossible.

32. To partially reduce the burden of the cost of caring for the foster children, Plaintiffs Marcel and Linda Youakim have, on the advice of a social worker employed by Defendants, applied for and do now receive some child support from the Cook County Department of Public Aid. The amount of said welfare payments is about $123.04 per month for two foster children and is substantially less than the amount of regular foster care payments, about $210.00 per month, they would receive but for being relatives.

33. The named Plaintiffs are informed and believe that:

33(a) Other members of the class are unaware of, or unable to procure the partial Public Aid subsidy; and do not now receive it;

33(b) The procedure for procuring a partial welfare subsidy is far more complex, burdensome, time consuming, and uncertain than the simple and regular foster care payment plan normally used by Defendants for unrelated foster homes.

33(c) All applications to, and all receipt of welfare payments from, the Cook County Department of Public Aid have a certain stigmatizing effect on the applicant/recipient, and this serves as a further deterrent to and thus discrimination against acceptance of related wards of the State for foster care. Plaintiffs Marcel and Linda Youakim would greatly prefer to receive full foster care payments from the Defendants rather than lesser welfare payments from the Department of Public Aid. Since they must seek and accept welfare payments to continue caring for Timothy and Mary Lou, Plaintiffs feel embarrassed and stigmatized in addition to being damaged by the difference in the amount.

33(d) Any difference in payment is damaging and discriminatory, and deters potentially qualified foster parents from accepting for foster care wards of the State related to them.

34. On information and belief, part or all of the funding for the Illinois Department of Children and Family Services and its foster care subsidy operators originate with the Federal Government. (Cf. Social Security Act, Subchapter 4, 42 U.S.C. § 601 et seq. esp. § 625 and generally, Federal Child Welfare and Revenue Sharing Laws).

35. It is the policy of the United States to encourage the care of children in their own homes or the homes of relatives whenever possible. 42 U.S.C. 601. (Complete text set out in Appendix C).

36. Plaintiffs are informed and believe that nothing in the Federal law or regulations concerning foster care payments, bars said payments to related foster parents. 42 U.S.C. 608 (Complete text set out in Appendix E).

37. It is the declared policy of the State of Illinois to administer all its laws in the best interests of the children of the State and to protect and promote the welfare of the children, including the strengthening of their own families wherever possible. Juvenile Court Act, Ill. Rev. Stats., 1971 Ch. 37 § 701 et seq; Department of Children and Family Services Act, Ill. Rev. Stats., 1971, Ch. 23 § 5001 et seq., esp. § 5005. (Appendices D and B).

38. Defendants' denial of the foster care payments to related foster parents conflict with the policy of the United States and the State of Illinois set out in paragraphs 32 through 34 above.

FIRST CAUSE OF ACTION

39. Plaintiffs reallege and incorporate by reference paragraphs 1 through 38 above.

40. Defendants, relying upon the statutes and regulations set out in paragraphs 10(a) and 10(b), *supra*, refuse to grant foster care payments to all persons, including Plaintiffs, who meet all State standards for foster homes, but who accept for foster care, or might accept for foster care, children—wards of the State—who are related to them.

41. Defendants, by granting foster care payments to qualified unrelated foster parents, and by refusing to grant such payments to qualified related foster parents, violate Plaintiff related foster parents' right to equal protection as guaranteed by the United States Constitution.

42. By acting as described, *supra*, Defendants create an invidious, arbitrary and capricious classification for which there is no rational basis and which serves no compelling State interest.

43. Defendant by refusing to grant foster care payments are causing immediate, irreparable, permanent and increasing injury to Plaintiff related foster parents for which there is no adequate remedy at law.

44. The challenged statutes and regulations are not saved by the stopgap provision of partial welfare payments from the Department of Public Aid for the reasons set out in paragraphs 33 and 34, *supra*.

SECOND CAUSE OF ACTION

45. Plaintiffs reallege and incorporate by reference paragraphs 1 through 38 above.

46. Defendants' action of granting foster care payments to qualified unrelated foster parents, and by refusing to grant such payments to qualified related foster parents, violates Plaintiff related foster children's right to equal protection as guaranteed by the United States Constitution.

47. By acting as described, *supra*, Defendants create an invidious, arbitrary and capricious classification for which there is no rational basis and which serves no compelling State interest.

48. Defendants by refusing to grant foster care payments are causing immediate, irreparable, permanent and increasing injury to Plaintiff related foster children for which there is no adequate remedy at law.

49. The challenged statutes and regulations are not saved by the stopgap provision of partial welfare payments from the Department of Public Aid for the reasons set out in paragraphs 33 and 34, *supra*.

THIRD CAUSE OF ACTION

50. Plaintiffs reallege and incorporate by reference paragraphs 1 through 38 above.

51. Defendants' action of granting foster care payments to qualified unrelated foster parents, and by refusing to grant such payments to qualified related foster parents, denies Plaintiff related foster children's right to equal protection by economically discriminating against those members of the class of Plaintiffs' children who could live with otherwise qualified and willing relatives but for the lack of State foster care payments. Foster children whose qualified relatives can afford to care for them without State payment, continue to receive the benefits of close family associations. Such discrimination based on wealth violates the Constitution of the United States, and the policy favoring placement with relatives wherever possible.

52. By acting as described, *supra*, Defendants create an invidious, arbitrary and capricious classification for which there is no rational basis and serves no compelling State interest.

53. Defendants by refusing to grant foster care payments are causing immediate, irreparable, permanent and increasing injury to Plaintiff related foster children for which there is no adequate remedy at law.

54. The challenged statutes and regulations are not saved by the stopgap provision of partial welfare payments from the Department of Public Aid for the reasons set out in paragraphs 33 and 34, *supra*.

PRAYER FOR RELIEF

55. Wherefore, Plaintiffs, on behalf of themselves and all others similarly situated respectfully pray:

55(a) That this Court assume jurisdiction of this cause and receive Plaintiffs application for a Three-Judge District Court pursuant to 28 U.S.C. Secs. 2281, 2284;

55(b) That this Court immediately notify the Chief Judge of this Circuit of the application to convene a Three-Judge District Court pursuant to 28 U.S.C. Secs. 2281, 2284;

55(c) That a Three-Judge District Court be convened to hear and adjudicate all questions in the cause;

55(d) That the Three-Judge District Court determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action;

55(e) That the Three-Judge District Court enter a final judgment permanently enjoining the State Director of the Illinois Department of Children and Family Services, and his successors, employees, or agents, and all other persons in active concert and participation, from enforcing, applying, or executing Ill. Revised Statutes, Ch. 23, § 2212.05 and § 2212.17 and Illinois Department of Children and Family Services Family Placement Manual, Ch. 5 § 3 at 95 through 97 as written because said statutes and regulations violate equal protection of the

law as guaranteed by Plaintiffs by the Fourteenth Amendment to the Constitution of the United States.

55(f) That the Three-Judge District Court order such other relief as may be deemed just, including the costs of this action, and reasonable attorneys fees.

Respectfully submitted,

MARCEL YOUAKIM
LINDA YOUAKIM
MARY LOU ROBERTSON (a minor)
TIMOTHY ROBERTSON (a minor)
LARRY ROBERTSON (a minor)
SHERRY ROBERTSON (a minor)

/s/ Patrick A. Keenan
Attorney for Plaintiffs

Of Counsel: Bogdan Martinovich '74
De Paul University College
of Law

[Affidavit of Verification Omitted]

EXHIBIT I

State of Illinois
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
Division of Child Welfare

RELATIVE HOME PLACEMENT AGREEMENT

Date of Placement 1/7/72

The Division of Child Welfare, Department of Children and Family Services, has approved the home of Mr. and Mrs. Marcel Youakim, address 1720 Mannheim Rd., Des Plaines, Ill., for the care of a foster child: Name: Timothy Robertson, Born 5/1/65.

* * *

The district worker will visit the above home in order to:

Know the child and keep informed regarding his adjustment.

Assist the * * * family and the child in problems that may arise.

Discuss information regarding the child's family and background in order to assist the * * * family in understanding and helping the child.

Plan for meeting the clothing, medical care, and other needs of the child.

Discuss any changes in planning for the child.

The Department has the right and authority to remove the child when it appears that this is in his best interests, and agrees to give at least two weeks notice prior to removal if at all possible. However, in those instances in which the Department receives substantiated evidence that the child is receiving improper care or treatment, the Department will remove the child immediately pending investigation. The * * * parents agree to cooperate with the Department and to:

Share with the worker their experiences with the child.

Comply with requirements for regular medical and dental examinations.

Report to the worker any illness of the child and any need for medical care.

Call a physician immediately and notify the district office as soon as possible in case of acute illness or accident.

Discuss any change in plans for the child with the worker.

Plan clothing and other needs with the worker.

Consult the worker regarding any extended trip being planned for the child. When the trip is out-of-state, consent from the district office is necessary.

Cooperate with the worker regarding visits between the child and his family either in the * * * home, office, or elsewhere; treat the parents courteously, and refrain from criticizing them in the child's presence.

Plan with the worker before making religious commitments for the child, such as baptism, confirmation, and church membership.

Keep confidential all information regarding the child and his family.

Make no arrangements for boarding other children without approval of the worker.

Report any changes in the * * * family's situation, or circumstances, which may affect the welfare of the child or the * * * family's ability to continue giving care. Give the worker at least two weeks notice, in any situation, when requesting that the child be removed. More than two weeks is often needed to complete planning for the child.

It is understood by both the worker and the * * * parents that the child is not placed for adoption in this * * * home, and that the child may be removed by the Department when it appears to be for the child's best interests.

This placement agreement, made in good faith and mutual confidence, is equally binding on the Department and the * * * ABOVE NAMED RELATIVES.

(District office stamp)

/s/ Marcel Youakim, 1/7/72
* * * M. Youakim
brother-in-law

/s/ Linda Youakim, 1/7/72
Sister—Linda Youakim

/s/ Christine Mendoza
(Department Representative) 1/7/72

EXHIBIT A TO COMPLAINT

Chapter 23 Illinois Revised Statutes

2212.05 Facility for child care, defined.] § 2.05. "Facility for child care" or "child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in this Act, established and maintained for the care of children.

2212.17 Foster family home and types of homes, defined.] § 2.17. "Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated to them, unless all the children are of common parentage, for the purpose of providing family care and training for the children on a full-time basis. The family's own children, under 18 years of age, shall be included in determining the maximum number of children served. The term "foster family home" includes homes receiving children from any State-operated institution for child care; or from any agency established by a municipality or other political subdivision of the State of Illinois authorized to provide care for children outside their own homes. The types of foster family homes are defined as follows:

(a) "Boarding home" means a foster family home which receives payment for regular full-time care of a child or children.

(b) "Free home" means a foster family home other than an adoptive home which does not receive payments for the care of a child or children.

(c) "Adoptive home" means a foster family home which receives a child or children for the purpose of adopting the child or children.

(d) "Work-wage home" means a foster family home which receives a child or children who pay part or all of their board by rendering some services to the family

not prohibited by the Child Labor Law[1] or by standards or regulations of the Department prescribed under this Act. The child or children may receive a wage in connection with the services rendered the foster family.

(e) "Agency-supervised home" means a foster family home under the direct and regular supervision of a licensed child welfare agency, of the Department of Children and Family Services, of a circuit court, or of any other State agency which has authority to place children in child care facilities, and which receives no more than 8 children, unless of common parentage, who are placed and are regularly supervised by one of the specified agencies.

(f) "Independent home" means a foster family home, other than an adoptive home, which receives no more than 4 children, unless of common parentage, directly from parents, or other legally responsible persons, by independent arrangement and which is not subject to direct and regular supervision of a specified agency except as such supervision pertains to licensing by the Department.

[1] Chapter 48, § 31.1 et seq.

EXHIBIT B TO COMPLAINT

Chapter 23 Illinois Revised Statutes

§ 5001. Purpose

The purpose of this Act is to create a Department of Children and Family Services to provide social services to children and their families, to operate children's institutions, and to provide certain other rehabilitative and residential services as enumerated in this Act. 1963, June 4, Laws 1963, p. 1061, § 1.

5005. Direct child welfare services.] § 5. To provide direct child welfare services when not available through other public or private child care or program facilities.

For purposes of this Section:

The term "children" means persons found within the State who are under the age of 18 years at the time of acceptance for service or care. The term also includes children under age 18 and children age 18 or more, but under age 21 who (1) are in foster care under order of a court and (2) were, at any time before August 1, 1969, recipients of foster care under Sections 6-4 or 12-8.6 of "The Illinois Public Aid Code", approved April 11, 1967, as amended.[1]

The term "child welfare services" means public social services which supplement or substitute for parental care and supervision for the purpose of: (1) preventing or remedying or assisting in the solution of problems which may result in the neglect, abuse or exploitation of children; (2) protecting and caring for homeless, dependent or neglected children; (3) protecting and promoting the welfare of children, including the strengthening of their own families and counseling of family members; (4) providing adequate care of children away from their homes, where needed, in foster family homes or day care or other child care facilities; or (5) providing counseling for mentally retarded, physically, and socially handicapped children and their parents when not otherwise available.

[1] Chapter 23, §§ 6-4, 12-18.6.

The Department shall establish and maintain tax-supported child welfare services and extend and seek to improve voluntary services throughout the State, to the end that services and care shall be available on an equal basis throughout the State to children requiring such services.

For the purpose of insuring effective state-wide planning, development, and utilization of resources for the day care of children, operated under various auspices, the Department is hereby designated to coordinate all day care activities for children of the State and shall:

(1) Develop a comprehensive day-care plan for the State which identifies high-priority areas and groups, relating them to available resources, and identifying the most effective approaches to the use of existing day care services. The plan shall include methods and procedures for the development of additional day care resources for children to meet the goal of reducing short-run and long-run dependency and to provide necessary enrichment and stimulation to the education of young children. Recommendation shall be made for State policy on optimum use of private and public, local, state and federal resources. A written plan shall be submitted to the Governor, annually, on January 1, and shall include an evaluation of developments over the preceding year, including cost-benefit analyses of various arrangements.

(2) The Department shall conduct day care planning activities within the following priorities:

(a) development of voluntary day care resources wherever possible, with the provision for grants-in-aid only where demonstrated to be useful and necessary as incentives or supports;

(b) emphasis on service to children of recipients of public assistance where such service will allow training or employment of the parent toward achieving the goal of independence;

(c) maximum employment of recipients of public assistance in day care centers and day care homes, operated in conjunction with short-term work training programs:

(d) care of children from families in stress and crisis whose members potentially may become, or are in danger of becoming, non-productive and dependent;

(e) expansion of family day care facilities wherever possible;

(f) location of centers in economically depressed neighborhoods, preferably in multi-service centers with cooperation of other agencies;

(g) use of existing facilities free of charge or for reasonable rental wherever possible in lieu of construction.

(3) Based on its planning activities, the Department shall actively stimulate the development of public and private resources at the local level. It shall also seek the fullest utilization of federal funds directly or indirectly available to the Department.

(4) Where appropriate, existing non-governmental agencies or associations shall be involved in planning by the Department.

The Department shall establish rules and regulations concerning its operation of programs established to meet these purposes, including but not limited to adoption, foster care, family counseling, protective services, service to unwed mothers, homemaker service, return of runaway children, and interstate services.

The Department may provide financial assistance, and shall establish rules and regulations concerning such assistance, to persons who adopt physically or mentally handicapped, older and other hard-to-place children who immediately prior to their adoption were legal wards of the Department. The amount of assistance may vary, depending upon the needs of the child and the adoptive parents, but must be less than the monthly cost of care of the child in a foster home. Special purpose

grants are allowed where the child requires special service but such costs may not exceed the amounts which similar services would cost the Department if it were to provide or secure them as guardian of the child.

The Department shall accept the care and training any child who has been adjudicated neglected or dependent committed to it pursuant to the "Juvenile Court Act".[2] The Department may, at its discretion except for those children also adjudicated neglected or dependent, accept for care and training any child who has been adjudicated delinquent or as a minor in need of supervision, under the "Juvenile Court Act", but no such child shall be committed to the Department by any court without the approval of the Department.

The Department may assume temporary custody of any child (1) if it has received a written consent to such temporary custody signed by the parents of the child or by the parent having custody of the child if the parents are not living together or by the guardian or custodian of the child if the child is not in the custody of either parent or (2) if the child is found in the State and neither a parent, guardian nor custodian if the child can be located. The Department shall have the authority, responsibilities and duties that a legal custodian of the child would have pursuant to Section 1-12 of the "Juvenile Court Act".[3] A parent, guardian or custodian of a child in the temporary custody of the Department who would have custody of the child if he were not in the temporary custody of the Department may deliver to the Department a signed request that the Department surrender the temporary custody of the child. The Department may retain temporary custody of the child for 10 days after the receipt of the request, during which period the Department may cause to be filed a petition pursuant to the "Juvenile Court Act". If a petition is so filed, the Department shall retain temporary custody of the child until the court orders otherwise. If a petition is not filed within the 10 day period, the child shall

[2] Chapter 37, § 701-1 et seq.

[3] Chapter 37, § 701-12.

be surrendered to the custody of the requesting parent, guardian or custodian not later than the expiration of the 10 day period, at which time the authority and duties of the Department with respect to the temporary custody of the child shall terminate. The Department may place children under 18 years of age in licensed child care facilities when in the opinion of the Department, such placement would be for their best interest. Payment for board, clothing, care, training and supervision of any child placed in a licensed child care facility may be made by the Department, by the parents or guardians of the estates of those children, or by both the Department and the parents or guardians, except that no payments shall be made by the Department for any child placed in a licensed child care facility for board, clothing, care, training and supervision of such a child that exceed the average percapita cost of maintaining and of caring for a child in institutions for dependent or neglected children operated by the Department. However, such restriction on payments does not apply in cases where children require specialized care and treatment for problems of severe emotional disturbance, physical disability, social adjustment, or any combination thereof and suitable facilities for the placement of such children are not available at payment rates within the limitations set forth in this Section.

The Department may receive and shall use, in its entirety, for the benefit of children any gift, donation or bequest of money or other property which is received on behalf of such children, or any financial benefits to which such children are or may become entitled while under the jurisdiction or care of the Department.

Amended by P.A. 76-2041, § 1, eff. July 1, 1970; P.A. 77-1374, § 1, eff. Aug. 31, 1971.

Appendix C To Complaint

Title 42 United States Code

§ 601. Appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

Aug. 14, 1935, c. 531, Title IV, § 401, 49 Stat. 627; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 312(a), 70 Stat. 848; July 25, 1962, Pub. L. 87-543, Title I, § 104(a)(4), (c)(2), 76 Stat. 185, 186; Jan. 2, 1968, Pub. L. 90-248, Title II, § 241(b)(1), 81 Stat. 916.

§ 625. "Child-welfare services" defined

For purposes of this subchapter, the term "child-welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purpose of (1) preventing or remedying, or assisting in the solution of problems which may result, in the neglect, abuse, exploitation, or deliquency of children, (2) protecting and caring for homeless, dependent, or neglected

children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities.

Aug. 14, 1935, c. 531, Title IV, § 425, as added Jan. 2, 1968, Pub. L. 90-248, Title II, § 240(c), 81 Stat. 914.

Appendix D To Complaint

Chapter 37 Illinois Revised Statutes

§ 701-2. Purpose and Policy

(1) The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his own home, as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should be given by his parents, and in cases where it should and can properly be done to place the minor in a family home so that he may become a member of the family by legal adoption or otherwise.

(2) In all proceedings under this Act the court may direct the course thereof so as promptly to ascertain the jurisdictional facts and fully to gather information bearing upon the current condition and future welfare of persons subject to this Act. This Act shall be administered in a spirit of humane concern, not only for the rights of the parties, but also for the fears and the limits of understanding of all who appear before the court.

(3) This Act shall be liberally construed to carry out the foregoing purpose and policy.

Laws 1965, p. 2585, § 1-2, eff. Jan. 1, 1966.

Appendix E To Complaint

Title 42 United States Code

42 § 608 PUBLIC HEALTH AND WELFARE

§ 608. Payment to States for foster home care of dependent children; definitions

Effective for the period beginning May 1, 1961—

(a) the term "dependent child" shall, notwithstanding section 606(a) of this title, also include a child (1) who would meet the requirements of such section 606(a) or of section 607 of this title except for his removal after April 30, 1961, from the home of a relative (specified in such section 606(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 602 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f)(1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 602 of this title, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the months in which court proceedings leading to such determination were initiated, or (B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 606(a) of this title within 6 months prior to the month in which such proceedings were initiated, would have received such

aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefor;

(b) the term "aid to families with dependent children" shall, notwithstanding section 606(b) of this title, include also foster care in behalf of a child described in paragraph (a) of this section—

(1) in the foster family home of any individual, whether the payment therefor is made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payment therefor is made to such institution or to a public or non-profit private child-placement or child-care agency, but subject to limitations prescribed by the Secretary with a view to including as "aid to families with dependent children" in the case of such foster care in such institutions only those items which are included in such term in the case of foster care in the foster family home of an individual.

(c) the number of individuals counted under clause (A) of section 603(a)(1) of this title for any month shall include individuals (not otherwise included under such clause) with respect to whom expenditures were made in such month as aid to families with dependent children in the form of foster care; and

(d) services described in paragraph (f)(2) of this section shall be considered as part of the administration of the State plan for purposes of section 603(a)(3) of this title;

but only with respect to a State whose State plan approved under section 602 of this title—

(e) includes aid for any child described in paragraph (a) of this section, and

(f) includes provision for (1) development of a plan for each such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution) to assure that he

receives proper care and that services are provided which are designed to improve the conditions in the home from which he was removed or to otherwise make possible his being placed in the home of a relative specified in section 606(a) of this title, and (2) use by the State or local agency administering the State plan, to the maximum extent practicable, in placing such a child in a foster family home or child-care institution, of the services of employees, of the State public-welfare agency referred to in section 722(a) of this title (relating to allotments to States for child welfare services under sections 721-728 of this title) or of any local agency participating in the administration of the plan referred to in such section, who perform functions in the administration of such plan.

For purposes of this section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards established for such licensing; and the term "child-care institution" means a nonprofit private child-care institution which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing.

Aug. 14, 1935, c. 531, Title IV, § 408, as added May 8, 1961 Pub.L. 87-31, § 2, 75 Stat. 76, and amended July 25, 1962, Pub.L. 87-543, Title I, §§ 101(b)(2)(D), 104(a)(3)(F), (G), 131(b), 135(a)-(d), 155(a), 76 Stat. 180, 185, 193, 196, 197, 207; Jan. 2, 1968, Pub.L. 90-248, Title II, §§ 201(e)(4), 205(c), 81 Stat. 880, 892.

APPENDIX F TO COMPLAINT

ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Social Services—PLACEMENT MANUAL July 17, 1972

Chapter Three

SPECIAL CHILD CARE PROGRAMS

Part Five: PLACEMENT WITH RELATIVES

I. DEFINITION

"Relative" means a person having any of the following relationships to the child by blood, marriage, or adoption: grandparents, brother, sister, stepbrother, stepsister, uncle or aunt. By administrative interpretation the definition has been broadened to include great-uncle, great-aunt and great-grandparent. Such "related" persons are not subject to foster home licensing whereas all other "relative" homes are subject to study and licensing as a foster family home.

II. LEGAL BASE

The Act Creating the Department of Children and Family Services authorizes provision of child welfare services which supplement or substitute parental care. Provision of such services does not preclude placement of a child under care with approved relatives.

III. SCOPE OF SERVICE

The primary consideration in placement of a child with relatives are the needs of the child. Such placement, if indicated, is designed to reinforce the child's identification with "family."

IV. CRITERIA

If a relative home is to be considered as a placement resource the home must reasonably meet the minimum

standards cited in Chapter Two, Section IV. Relative resources should be explored for all children for whom placement is indicated with the exception of children relinquished for adoption.

V. INTAKE

A. Request For Service

(1) The district office should check with the Illinois Department of Public Aid as a potential financial resource for the child(ren) living with relatives at the time of referral or for whom relatives are interested in accepting for care.

(2) Form CFS-602, *Medical Report on An Adult or Child in a Licensed Child Care Facility*, must be completed for all members of the household if a relative home is being considered as a placement resource.

B. Evaluation

Interest and concern of relatives in the child(ren); the feeling of relatives toward parents; ability to cooperate with the Department; and, placement of choice of the parents and child(ren) must all be explored as essential elements for a successful placement.

C. Disposition

In all relative placements the district office should approach the court seeking a court order appointing the Guardianship Administrator or the approved relative as guardian of the person of the child(ren) to insure the availability of a person to make decisions in behalf of the child(ren) and to prevent removal of the child(ren) by unauthorized persons.

VI. PROCEDURES FOLLOWING CASE ACCEPTANCE

A. The District Office will:

(1) Arrange for placement and authorize payment, if indicated and approved by Social Service Administrator, Metropolitan or Downstate Area.

(2) Supervise placement and provide casework services to the family or relatives on behalf of the child(ren).

B. The Relative will:

(1) Accept terms of placement such as duration and agency goals for the child(ren) and work cooperatively with the agency to achieve these goals.

(2) Respect the parents desires for religious training for the child(ren).

Chapter Three

Part Five—Appendix 1—Fiscal Policies and Procedures

SPECIAL CHILD CARE PROGRAMS

I. PLACEMENT WITH RELATIVES

A. The Department has no statutory authority to pay relatives for the care of children. Only the Social Service Administrator of Metropolitan or Downstate Area may authorize such payment and it will not be authorized without written approval. A request for payment of a relative shall include: summary of the child's situation; legal status; reason for considering the proposed placement as desirable for the child; financial circumstances of the relatives; and, monthly rate for which approval is requested.

B. If payment is to be made it shall be an *inclusive* rate which *does not exceed* the regular *rates* paid to *Division of Child Welfare foster family homes.*

C. Monthly payment to relatives is authorized by directing completed Form CFS-903, *Payment Authorization*, to the Division of Methods and Information Services, State Administrative Office, Springfield, 62706. Indicate in Section 4, Type of Payment #34 Relative—"legally exempt from licensing." Monthly amount to be entered in Section 5 Payments—Board. (See Chapter Two, Appendix 1, IIA—Monthly Payment Rate.)

D. Initial placement clothing may be authorized by use of Forms CFS-932, *Purchase Authorization*, and FA-13, *Invoice-Voucher*. The vendor(s) should direct the completed forms to the Division of Administrative Services, State Administrative Office, Springfield, 62706, for payment. (See Chapter Two, Appendix 1, II B—Initial Clothing Allowance.)

E. Form CFS-425, *Foster Home Placement Agreement*, is to be signed in duplicate by the relative payee and the district worker with changes to indicate the relationship of the caretaker(s) to the child. One copy is kept by the relative and the other filed in the child's record.

Defendants' Motion to Strike and Dismiss Complaint, to Stand as to Second Amended Complaint

Filed April 2, 1973

[Caption Omitted in Printing]

NOW COME Defendants JEROME MILLER, individually and as Director of the Illinois Department of Children and Family Services, and the DEPARTMENT OF CHILDREN AND FAMILY SERVICES, by their attorney WILLIAM J. SCOTT, Attorney General of the State of Illinois, and pursuant to Rule 12 of Federal Rules of Civil Procedure respectfully move this Court to strike and dismiss the Plaintiffs' Complaint. In support of this Motion, the Defendants herein state as follows:

1. The allegations contained in Plaintiffs' Complaint, which purport to set forth a violation of equal protection, specifically Ill. Rev. Stat. Chapter 23, Sections 2212.05 and 2212.17, are conclusory in nature and fail to state a cause of action or state a claim upon which relief may be granted.

A. Said statute as it stands is a valid legislative classification permissible under state and federal law and does not constitute arbitrary, capricious or invidious discrimination in violation of U.S.C. Constitutional Amendment 14.

2. This Court does not have jurisdiction over the subject matter as to these defendants.

A. Plaintiffs by bringing suit against the Department of Children and Family Services is in effect bringing suit against the State.

B. The State of Illinois has not consented to be sued by Plaintiffs in Federal Court and as such cannot be made subject of such suit by virtue of its grant of immunity by U.S.C. Constitutional Amendment II.

C. In the event this Court should determine that its jurisdiction does in fact attach hereto, it should abstain from exercising such jurisdiction by virtue of there being an effective remedy existing at the level of the State Courts.

3. The class action commenced herein is improperly brought and fails to meet the requirement demanded of such action in that:

A. The claims of Plaintiffs are not representative of the class as a whole.

B. The Plaintiffs as representative cannot adequately protect the intreests of teh class.

C. There is doubt as to whether there exists a common question of law or fact applicable to the entire class.

Respectfully submitted,

William J. Scott
Attorney General of Illinois

Richard L. Ryan
Special Ass't Atty General
(Of Counsel)

[Notice of Filing and Certificate of Service Omitted]

MOTION TO CONVENE THREE-JUDGE DISTRICT COURT

Filed April 16, 1973

[Caption Omitted in Printing]

Now come Plaintiffs MARCEL YOUAKIM and LINDA YOUAKIM, et al., by their attorney PATRICK A. KEENAN, DePaul Law Clinic, and respectfully move this Court to immediately notify the Chief Judge of this Circuit to convene a Three-Judge District Court pursuant to 28 U.S.C. §§ 2281, 2284 to hear and adjudicate all questions in this cause. As grounds for this motion, Plaintiffs state:

This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 since Plaintiffs seek a permanent injunction to restrain the defendant, who is a state officer, from the enforcement, application and execution of state statutes (Ill. Rev. Stats. Ch. 23 §§ 2212.05, 2212.17) of state-wide applicability on the grounds that said statutes, which authorize state foster care payments to foster children in homes of unrelated foster parents, but which deny state foster care payments to foster children in homes of foster parents in any way related to them, are in violation of the equal protection clause of the United States Constitution.

Respectfully submitted,

/s/ PATRICK A. KEENAN
Attorney for Plaintiffs

Of Counsel: Bogdan Martinovich '74
DePaul University College of Law

ORDER DESIGNATING THE HONORABLE PAUL STEVENS, CIRCUIT JUDGE, HONORABLE ABRAHAM L. MAROVITZ, DISTRICT JUDGE, AND HONORABLE PHILIP W. TONE, DISTRICT JUDGE TO SERVE AS MEMBERS OF A THREE-JUDGE COURT

No. 73 C 635

Filed May 25, 1973

[Caption Omitted in Printing]

The undersigned Chief Judge of the Seventh Circuit having been notified by the Honorable Philip W. Tone, United States District Judge for the Northern District of Illinois, of the filing of the above-mentioned cause, does hereby pursuant to Title 28 U.S.C. § 2284 designate the

HONORABLE JOHN PAUL STEVENS

a United States Circuit Judge for the Seventh Judicial Circuit and the

HONORABLE ABRAHAM L. MAROVITZ

a United States District Judge for the Northern District of Illinois, to serve with the

HONORABLE PHILIP W. TONE

as members of a three-judge United States District Court to hear and determine the above-entitled action or proceeding.

Dated this twenty-fourth day of May, 1973

/s/ Luther Swygert
Chief Judge of the Seventh Circuit

AFFIDAVITS OF FRANK KOPECKY AND RALPH HANEBUTT, IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS OR ALTERNATIVELY FOR SUMMARY JUDGMENT

Filed Jan. 8, 1974

[Caption Omitted in Printing]

I, Frank J. Kopecky, having been duly sworn on oath hereby states as follows:

(1) I am Chief Counsel for the State of Illinois Department of Children and Family Services and have been employed in this capacity since July, 1972. As Chief Counsel my duties include interpreting State and Federal laws and regulations which affect the Department of Children and Family Services.

(2) The general policy of the Department of Children and Family Services is not to make payments to relatives caring for children under the Department's guardianship beyond the amount which the children may be entitled to under the Aid to Families with Dependent Children Program (AFDC), administered by the State of Illinois Department of Public Aid. However, the Department of Children and Family Services will, as an exception to its general policy, make payments beyond the AFDC amount if the families needs justify the payment. This policy is found in the Department of Children and Family Services' Placement Manual, pages 95-97.

(3) The Department's general policy of not paying relatives is not based on the Child Care Act of 1969 which established licensing criteria, but on the administrative interpretation of the Department and the United States Department of Health Education and Welfare that Federal financial participation would not be available under Section 408 (42 USCA § 608 1972) of the Social Security Act to children living with relatives as defined by Section 406(a) of the Social Security Act (42 USCA § 606(a) 1972).

(4) Under the State of Illinois welfare system the Department of Public Aid administers the Aid to Families with Dependent Children Program (AFDC) and the Department of Children and Family Services administers the much smaller Aid to Families with Dependent Children—Foster Care Program (AFDC-FC).

(5) Children removed from their homes and placed under the guardianship of the Department of Children and Family Services pursuant to the Juvenile Court Act and placed with relatives as defined by § 406 of the Social Security Act would, as a general rule, be entitled to AFDC from the Department of Public Aid. This amount would be approximately $61.00 per child and would be given based on the eligibility criteria of the home from which the child was removed. The wealth of the relatives would not be considered. If the child were placed with non-relatives, the higher AFDC-FC amount would be paid. This amount is approximately $105.00 per child. Eligibility is once again based on the eligibility criteria of the home from which the child was removed.

(6) In addition, the Department of Children and Family Services will as an exception to policy as outlined in its Placement Manual, pages 95-97, make payments up to the full foster care rate if the relatives are needy and an amount beyond the amount paid by the Department of Public Aid is needed to maintain the placement.

/s/ Frank J. Kopecky

[Jurat Omitted]

Affidavit of Ralph Hanebutt in Support of Defendant's Motion to Dismiss

Filed January 8, 1974

[Caption Omitted in Printing]

I, Ralph Hanebutt, having been duly sworn state as follows:

(1) I am the Assistant to the Deputy Director of Program Services, and as such have administrative responsibility for the program and policy of the State of Illinois Department of Children and Family Services.

(2) That the attached pages 95 through 97 are true and correct copies of Chapter 3, Section 5 of the Illinois Department of Children and Family Services Placement Manual and as such reflect the policy of the Department in regards to children placed with relatives.

(3) That as of October 1, 1973, the Department had guardianship of approximately 1500 children placed with relatives of which approximately 140 are receiving payments for care in accordance with the policy outlined on page 97 of the Placement Manual. Such payments are made on the basis of an exception to policy.

(4) That a child receiving payment from the Department of Public Aid under the AFDC program would receive approximately $63.00, while the child receiving payment from the Department of Children and Family Services would receive, on the average, approximately $105.00.

/s/ Ralph L. Hanebutt

[Jurat Omitted]

Plaintiffs' Motion to Strike Certain Portions of Affidavit of Frank Kopecky Filed January 8, 1974 in Support of Defendants' Motion for Summary Judgment

Filed Jan. 24, 1974

[Caption Omitted in Printing]

Plaintiffs, by their attorney, PATRICK A. KEENAN, DePaul Law Clinic, respectfully move this Court to strike paragraphs 2, 3, 4, 5, and 6 of Frank Kopecky's Affidavit in Support of Motion for Summary Judgment filed January 8, 1974, and in support of their motion respectfully state:

1. Under the rules and law of Federal Civil Procedure, affidavits in support of a motion for summary judgment must contain facts or information that could be admitted to evidence, and those portions thereof which are inadmissible should be stricken upon timely objection. *U.S.* v. *Western Electric Co.* 337 F2d 568 (CA9 1964); *Ernst Seidelman Corp.* v. *Mollinson* 10 FRD 426 (S.D. Ohio 1950).

2. Paragraphs 2 and 5 contain statements which are directly inconsistent. Both cannot be true:

2a. Paragraph 2 states: ". . . the Department of Children and Family Services will as an exception to general policy make payments beyond the AFDC amount if the families needs justify the payment." The family referred to is the foster family, and eligibility is based on the foster families' income.

2b. But Paragraph 5 states that: "Eligibility [for the lower ADC subsidy of $61.00 paid related foster parents and the higher subsidy of $105.00 paid non-related foster parents] is once again based on the eligibility criteria of the home from which the child was removed.

2c. Said inconsistency is not resolved by the allegations of Paragraph 6, and Paragraphs 2, 5, and 6 read together do not set out a policy which is consistent or even comprehensible.

3. Rule 56(e) states in part: "Sworn copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith." (F.R.C.P. 56 (e)).

4. Paragraph 3 of Kopecky's affidavit states that the basis for the Department's policy is ". . . the administrative interpretation of the Department and of the United States Department of Health, Education and Welfare that Federal financial participation would not be available under Section 408 (42 USCA § 608 1972) of the Social Security Act to children living with relatives as defined by Section 406(a) of the Social Security Act (42 USCA § 606(a) 1972)."

4a. Said administrative interpretation has been reduced to writing and is not attached. There is no cite to the Code of Federal Regulations.

4b. Said allegation is hearsay and incompetent in that the affiant cannot make official interpretations of the Social Security Act for the Department of Health, Education and Welfare.

5. Likewise Paragraph 4 declares the relative jurisdiction of the Department of Public Aid and Department of Children and Family Services. Said jurisdiction or functions are set out in an "Interagency Agreement" which must be attached.

5a. Counsel for Plaintiffs requested a copy of said Interagency Agreement from both affiant Kopecky and Assistant Attorney General Ryan and other lawyers employed by Defendants. None of said lawyers have been able to find it. Failure to produce and attach said document to the affidavit requires that Paragraph 4 be stricken for failure to comply with Rule 56(e). Plaintiffs do not know, and cannot determine without inspecting said Interagency Agreement, whether the statements in Paragraph 4 are accurate.

6. The instant case has been continued several times on the Defendants' or the Court's motion, and Defendants have had ample time to prepare their case and find and attach the above-mentioned documents. An affidavit of Defendants' counsel which purports to offer interpretations of various State and Federal laws and regulations,

some of which are not attached to the Affidavit, and which purports to resolve all contested issues of law and fact, should be stricken. It is not a sufficient basis to require dismissal of, or summary judgment against, the well-pleaded Complaint which describes a clear violation of constitutional equal protection by a scheme discriminatory on its face and admitted to be discriminatory by Defendants.

7. WHEREFORE, Plaintiffs respectfully request that Paragraphs 2, 3, 4, 5, and 6 of Frank Kopecky's Affidavit in Support of Defendants' Motion for Sumary Judgment be stricken, and that Defendants' Motion be denied.

Respectfully submitted,

/s/ PATRICK A. KEENAN
Attorney for Plaintiffs

Of Counsel: Bogdan Martinovich
Senior Law Student
DePaul University College of Law

EVERETT MCLEARY AFFIDAVIT IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR ALTERNATIVELY FOR SUMMARY JUDGMENT

Filed January 24, 1974

[Caption Omitted in Printing]

I, EVERETT MC LEARY, having been duly sworn on oath hereby state as follows:

1. I am a former employee of the Department of Children and Family Services. My position with the Department was that of an executive assistant to Director of the Department. As an executive assistant my duties included processing and administrating various Departmental programs with respect to child care facilities.

2. Foster family homes of related foster parents generally receive the same degree and frequncy and quality of monitoring by Department personnel as do all other foster homes and foster care institutions.

3. Department policy of not providing foster care payments to prospective related foster parents often makes more difficult or entirely precludes placement of related foster children in homes that the Department has decided would otherwise be in the best interest of such child.

4. Foster children placed with related foster parents are, in addition to said foster care payment, denied benefits of certain Department programs. These programs include payment for music lessons, membership fees to clubs and others that foster children living with unrelated foster parents receive.

5. The Department does from time to time, as an exception to policy, provide some foster care payments to related foster parents. When such exceptions to policy are made related foster parents receive foster care payment up to the amount allowable to unrelated foster parents. Such payments are not always made in an amount equal to that received by unrelated foster parents.

6. To my knowledge there was when I was employed, no material published by the Department that sets forth the specific criteria upon which decisions to grant exceptions to policy are based.

7. It is my opinion based upon my experience in the capacity of an executive assistant to the Director of the Department of Children and Family Services that foster care in a foster family home is less expensive than institutional foster care.

8. It is my opinion that certain of the Department's wards now placed in foster care institutions could be placed in foster homes with their relatives, but that such placements do not occur because of the general policy against allowing full subsidy of foster children living with their relatives. To date, this policy has not been changed.

FURTHER this affiant sayeth not.

/s/ Everett McLeary

[Jurat Omitted]

[Jurat Omitted]

PATRICK A. KEENAN
Attorney for Plaintiffs

MEMORANDUM OF DECISION

Reported at 374 F.Supp. 1205

UNITED STATES DISTRICT COURT

N.D. ILLINOIS, E.D.

No. 73 C 635

Feb. 28, 1974

MARCEL YOUAKIM ET AL., PLAINTIFFS

v.

JEROME MILLER Individually and as Director of the Department of Children and Family Services and the Department of Children and Family Services, of the State of Illinois, DEFENDANTS

Patrick A. Keenan, Chicago, Ill., for plaintiffs.

William J. Scott, Atty. Gen., State of Ill., Richard L. Ryan, Asst. Atty. Gen., Chicago, Ill., for defendants.

Before STEVENS, Circuit Judge, and MAROVITZ and TONE, District Judges.

MEMORANDUM OF DECISION

TONE, District Judge.

This suit was commenced as a class action to enjoin the operation of the Illinois foster home program. Under that program foster parents who provide homes for children unrelated to them receive monthly foster care payments from the Department of Children and Family Services, but foster parents who provide homes for children related to them do not receive such payments. Because plaintiffs seek to enjoin the operation of a state statute, a three-judge court was convened pursuant to

28 U.S.C. §§ 2281, 2284. Defendants have now moved to strike and dismiss.

The Illinois statutory scheme allocates federally subsidized payments to foster parents who care for children who are wards of the state. Section 5 of the Department of Children and Family Services Act, Ill.Rev.Stat., 1971, Ch. 23, § 5005, empowers the Department ("CFS") and its Director to

(a) establish rules and regulations concerning foster care;
(b) accept for care and placement in foster homes children adjudicated wards of the state; and
(c) make payments for the board, clothing, care, training and supervision of children placed in licensed foster homes.

Under the Department's eligibility criteria, eligibility for monthly payments, which now approximate $105 per child, depends upon the economic status of the home from which the child was removed, not on the wealth of the foster parents. By authorizing payments only to licensed homes, Section 5 denies eligibility to foster parents providing homes for children related to them, because those foster parents are exempt from licensing under the Child Care Act of 1969, Ill.Rev.Stat., 1971, Ch. 23, §§ 2212.05, 2212.17, and thus cannot be licensed.[1] Foster parents caring for related children are eligible for Aid to Families with Dependent Children ("AFDC") payments under Ill.Rev.Stat., 1971, Ch. 23, §§ 4-1 to 4-11, but in order to receive these payments they must make a separate application to the Department of Public Aid, and more importantly, these monthly payments are only about $63.00 per child. In addition to the AFDC pay-

[1] The parties have directed their arguments primarily to the Illinois Department of Children and Family Services Manual at 95-97 as the authority for denying payments to related foster parents. This manual, however, merely states that "[t]he Department has no statutory authority to pay relatives for the care of children," and thus does no more than summarize what is apparent on the face of the statutes. For the purposes of this opinion, then, Ill.Rev.Stat., 1971, Ch. 23, §§ 2212.05, 2212.17, and 5005 will be considered as the challenged statutes.

ments, some foster families in which the parents and children are related receive additional funds from the Social Service Administration up to the amount of the foster care payments, if the Department of Children and Family Services makes a determination of need. This exception to the general practice is explained only in the CFS placement manual, but according to an affidavit filed by an administrator to CFS, approximately 140 of the 1500 related foster families in the state now receive this extra allowance.

Plaintiffs are Marcel and Linda Youakim, husband and wife; Timothy and Mary Lou Robertson, the minor brother and sister of Linda Youakim who have been living with their foster parents the Youakims since 1972; and Larry and Sherry Robertson, the minor brother and sister of Linda Youakim who have been living in foster care facilities operated by persons unrelated to them since 1969. The Youakims allege that because they do not receive the full foster care payments, they suffer severe financial hardship in caring for Timothy and Mary Lou, and are financially unable to take in Larry and Sherry. On behalf of themselves and all other persons similarly situated, plaintiffs assert that the distinction between related and unrelated foster parents for the purpose of determining eligibility for foster care benefits denies them equal protection of the laws as guaranteed by the Fourteenth Amendment, and they ask that defendants, the Illinois Department of Family Services and its director, be enjoined from enforcing, applying or executing this program.

Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, defendants have moved to strike and dismiss the complaint, asserting, in addition to an abstention ground which we do not reach.

(1) the Court does not have jurisdiction over the subject matter;
(2) the action should not be maintained as a class action; and
(3) plaintiffs have failed to state a claim upon which relief may be granted.

Both sides having filed affidavits asserting facts outside the pleadings, we treat the motion as one for summary judgment, as we are authorized to do by the last sentence of Rule 12(b).

At the oral argument plaintiffs urged that an evidentary hearing should be held. In the view we take of the case, if the evidence most favorable to plaintiffs' contentions is assumed, judgment must be entered for defendants. An evidentiary hearing is, therefore, unnecessary.

Jurisdiction

[1] Defendants argue that this Court lacks jurisdiction because the action is in effect against the State of Illinios and therefore is barred by the sovereign immunity provision of the Eleventh Amendment. This argument is without merit. Beginning with Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), it has been held that a suit to restrain unconstitutional action threatened by an individual who is a state officer is not a suit against the state and thus is not prohibited by the Eleventh Amendment. This rationale has been consistently followed in numerous civil rights cases and other actions where the application or execution of state statutes has been enjoined, *cf.* Townsend v. Swank, 404 U.S. 282, 92 S.Ct. 502, 30 L.Ed.2d 448 (1972); Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), and has been applied to permit suits against state officials to test the constitutionality of statutes under which they are acting, Hill v. Wallace, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822 (1922); Hammer v. Dagenhart, 247 U.S. 251, 38 S.Ct. 529, 62 L.Ed. 1101 (1918). Indeed, under this rationale courts have assumed jurisdiction over many recent suits against state officials brought for the purpose of attacking social welfare schemes similar to the one here in question. *Cf., e.g.,* Gaither v. Sterrett, 346 F.Supp. 1095 (N.D.Ind. 1972); Jefferies v. Sugarman, 345 F.Supp. 172 (S.D.N.Y.1972); Dimery v. Department of Social Services, 344 F.Supp. 1181 (S.D. Iowa 1972); Alexander v. Swank, 314 F.Supp. 1072

(N.D.Ill.1970). The Court has jurisdiction to decide this case.

Class Action Issue

[2, 3] Another preliminary question is the propriety of maintaining this action as a class action. If the requirements of Rule 23, F.R.Civ.P., are met, a court normally must approve a class action. Fujishima v. Board of Education, 460 F.2d 1355, 1360 (7th Cir. 1972); but see Ihrke v. Northern States Power Co., 459 F.2d 566, 572 (8th Cir. 1972). Defendants argue that the claims of the named plaintiffs are not typical because not all foster parents will be financially unable to care for children related to them if they do not receive payments from the state. This argument ignores the basis of plaintiffs' claims. Plaintiffs are not challenging a system where payments are made to some and denied to others on the basis of need, but a scheme whereby, irrespective of the individualized needs of the foster parents, payments are made to families where the foster parents and children are unrelated, but, as a general rule, not to related foster families. The exception to the general policy allows payments to related foster families in certain cases, but even in light of this, related foster parents as a class are treated differently than unrelated foster parents, because in order to qualify under this exception they must meet a certain level of need which the unrelated foster parents do not have to meet. Thus, the interests of the named plaintiffs are typical of the class and, the other requirements of Rule 23 also having been met, the class action will be approved.

Other Preliminary Matters

[4-6] Before proceeding to the merits, we must first dispose of several other matters. One of these is plaintiffs' motion to strike certain allegations of an affidavit in support of defendants' motion by Frank J. Kopecky, Chief Counsel for CFS. Plaintiffs first seek to strike reference to the exception to the scheme under attack

whereby under certain circumstances related foster parents are given payments in an amount equal to those given to unrelated foster parents. This motion will be denied, for plaintiffs have not presented adequate grounds to strike these allegations, and plaintiffs themselves have filed affidavits which refer to the same exception. Next, plaintiffs seek to strike an allegation in the affidavit which refers to an administrative determination as the basis for the Department's policy of generally not paying related foster parents. This allegation will be stricken because of the affiant's failure to state specific facts from which we can determine his personal knowledge of this matter. Finally, plaintiffs seek to strike statements relating to the respective jurisdictions of the Department of Public Aid and the Department of Children and Family Services. Plaintiffs' motion in this respect will be denied, the affiant being capable of testifying as to these matters from his own personal knowledge.

The Merits

[7] We turn now to the equal protection question. A state statute dealing with social welfare need only be rationally based and free from invidious discrimination. Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). Since the statutes challenged here fall within the category governed by the *Dandridge* rule, their validity depends upon whether the distinction between related and unrelated foster parents is based on differences that are reasonably related to the legitimate purposes of the foster care program. Morey v. Doud, 354 U.S. 457, 77 S.Ct. 1344, 1 L.Ed.2d 1485 (1953).

[8] Plaintiffs argue that, by providing for state aid only to foster parents who are unrelated to the child and denying it to others, the state has breached its duty to provide equally for all dependent children and has in fact contributed to the breakup of family homes. They assert that since related foster parents have the same need for state subsidies to provide adequately for their foster children as do unrelated foster parents, there is no basis for the distinction. Although this statement

of the state's duty may indeed be correct, plaintiffs have failed to recognize both the purpose for which the payments are made and the test to be employed in examining the classification of the statute. When a classification in a law such as this is called into question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. Morey v. Doud, *supra*, 354 U.S. 457; Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369 (1911).

[9] At the time this statute was enacted, the Illinois General Assembly could reasonably have been concerned about how to use available public funds to provide as many foster homes as possible. It could reasonably have set out to provide for allocation of the available funds in a manner designed to secure the maximum number of foster parents for children who would otherwise remain parentless. A reasonable method of achieving this goal would have been to provide for the distribution of funds only to persons who would otherwise have had no particular reason or incentive for becoming foster parents rather than allocating the funds to all persons who become foster parents and thereby reducing the amount received by each; and it is on this basis that the defendants assert the classification was made. Allegedly, the state perceived a moral obligation on behalf of related foster parents to care for their related children which could not or would not be deepened by providing them a pro rata portion of the available funds. Therefore, according to the defendants, the state decided that the money which could have been alloted to related foster parents would be better used as added inducement to unrelated parents.

This classification, the wisdom of which is not for us to determine, bears a rational relationship to the legitimate purpose of attempting to assure that foster homes are made available. Some related foster parents may not be able to afford the responsibility of caring for additional children,[2] but the state argues that the scheme

[2] Of course, this possibility is lessened by the fact that AFDC payments are generally available.

was not enacted to alleviate this problem, and from the fact that payments are not based on the relative wealth of the foster parents, this contention is borne out. In this respect, the case at bar differs from United States Department of Agriculture v. Moreno, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973), a case in which the Supreme Court held unconstitutional a statutory scheme which excluded from participation in the food stamp program any household containing an individual who is unrelated to any other member of the household. The critical point of that decision, and the basis upon which it is distinguishable from the case at bar, is that the purpose of the food stamp program was to alleviate hunger, and that to fulfill this purpose it had to be administered on the basis of need rather than on the basis of the relationships of the people constituting one economic unit and sharing cooking facilities.

More analogous to the case at bar is Ramos v. Montgomery, 313 F.Supp. 1179 (S.D.Cal. 1970), aff'd, 400 U.S. 1003, 91 S.Ct. 572, 27 L.Ed.2d 618 (1971), a case involving a challenge to a California scheme under which AFDC payments made to natural parents were substantially less than payments made to foster parents. The Court in that case recognized that maintenance of the family structure was an important consideration in any child welfare program and that some natural parents were financially unable to provide suitable homes for their children, but nevertheless upheld the classification on the ground that the overriding purpose of the statute was the overall interest of the public in the protection of children[3] and that this purpose was reasonably served

[3] Among the stated purposes for which child welfare services are authorized under the Illinois Department of Children and Family Services Act are "protecting and caring for homeless dependent or neglected children"; "protecting and promoting the welfare of children, including the strengthening of their own families and counseling of family members"; and "providing adequate care of children away from their homes, where needed, in foster family homes." Ill.Rev.Stat., 1971, Ch. 23, § 5005. On the basis of this language, it can be inferred that, as in *Ramos*, although strengthening of the family unit is an important concern of the Act, the

by a plan which was motivated to provide as many foster homes as possible.[4] The *Ramos* case is factually distinguishable from the case at bar, but the reasoning of the court is applicable here. A natural parent's responsibility to its child may stem from a legal duty, whereas a related foster parent's duty is moral, but in either case the result will generally be the same: the parent or relative is likely to care for the child. It is thus reasonable in either case for the state to adopt a program designed to induce families who would not otherwise become foster parents to assume that role.

The challenged classification will cause some children to be separated from their relatives for financial reasons. The state may reasonably have concluded, however, that the greater good of the greater number of children in need of foster homes is served by the classification which has been made. It may have concluded that if the classification were not made, the state's foster homes program would be jeopardized. As the class eligible to receive payments is made more inclusive, the individual payments become smaller. The possibility exists that if related persons are added to the eligible class, the individual payments would be reduced to an amount insufficient to induce qualified unrelated persons to provide foster homes for dependent children. Thus, the purpose of the payments would not be served, and either the fiscal integrity of the program would be impaired or the standards for approval of unrelated persons might have to be compromised.[5]

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primary purpose of the Act is the protection and care of children generally.

[4] Another basis for the decision in *Ramos* was that it was reasonable to expect that foster parents would incur expenses in meeting state licensing requirements which natural parents would not. Whether this rationale is also applicable to the case at bar is difficult to determine, for although relatives are not subject to licensing, they are kept under close scrutiny by CFS. In any event, it is not necessary for us to resolve this question.

[5] A consideration of the consequences of eliminating the classification which plaintiffs challenge will identify another rational basis for it. The payments which are the subject of this litigation

There is language in Townsend v. Swank, *supra*, 404 U.S. at 291, that serious equal protections problems may arise when a state attempts to rely on the concept of fiscal integrity to limit beyond federal statutory standards the class eligible to receive federally subsidized payments, but plaintiffs' argument that that dictum invalidates the Illinois program in question here is of no avail. The regulations interpreting the Federal Social Security Act gives the states "substantial latitude and corresponding responsibility for determining the coverage, nature, and scope of their public assistance programs," and limits this authority only to the extent that "the groups selected for inclusion in the plan . . . must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act." 45 C.F.R. § 233.10. Far from being inconsistent with the federal scheme, the Illinois scheme in general seems to parallel it.[6] The federal statute authorizes aid to the

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are intended to subsidize care for children who have been adjudicated wards of the state. It is manifest that there are many children in Illinois whose natural parents are deceased but who, without being adjudicated wards of the state, are cared for by relatives who are their legal custodians, guardians, or perhaps even adoptive parents. Certainly the state has an interest in encouraging its citizens to care for related minors who have been orphaned by the death of their parents, either by adopting them, accepting the responsibilities of guardianship, or even merely taking informal custody of such minor children without having them adjudicated wards of the state. If the plaintiffs' attack on the Illinois program were sustained, relatives would have a financial inducement to cause orphaned children to be adjudicated wards of the state in order to qualify themselves for foster care payments. The state may rationally conclude that such a financial motivation would contravene the policy of the laws relating to adoption and guardianship.

[6] Plaintiffs argue that the "exception to policy" under which some related foster parents receive additional allotments on the basis of need makes the state scheme unlike the federal. This is a variation, which the federal regulations explicitly allow, 45 C.F.R. § 233.10, but the two schemes are nevertheless parallel.

natural parents and relatives of dependent children in one section, 42 U.S.C. § 606, and aid to foster parents in another, 42 U.S.C. § 608. Additionally, more money is allocated under the federal plan to foster care payments than to regular AFDC payments. 42 U.S.C. § 603(a)(1)(B); see Ramos v. Montgomery, *supra*, 313 F.Supp. at 1182. Thus the federal statute makes the same classification as the Illinois statute.

The Illinois scheme does not deny plaintiffs equal protection of the laws. Summary judgment is entered in favor of defendants.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable PHILIP W. TONE

Cause No. 73 C 635 Date February 28, 1974

Title of Cause Youakim, et al v. Miller, etc., et al

Brief Statement of Order Enter Memorandum of Decision (Draft) JS-6

/s/ Tone, J.

PLAINTIFFS' NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Filed April 23, 1974

[Caption omitted in printing]

Notice is hereby given that MARCEL YOUAKIM, LINDA YOUAKIM, TIMOTHY ROBERTSON, MARY LOU ROBERTSON and SHERRY ROBERTSON, the plaintiffs above-named, hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on February 28, 1974.

This appeal is taken pursuant to 28 U.S.C., § 1253.

Respectfully submitted,

/s/ Patrick A. Keenan
De Paul Law Clinic
Counsel for Plaintiffs

Of Counsel: Bogdan Martinovich '74
DePaul University College of Law

[Notice of Filing and Proof of Service Omitted]

SUPREME COURT OF THE UNITED STATES

No. 73-6935

MARCEL YOUAKIM, ET AL., APPELLANTS

v.

JEROME MILLER, Individually and as Director of the Department of Children and Family Services, ET AL.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis*,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

March 17, 1975

Mr. Justice Douglas took no part in the consideration or decision of this motion.

SUPREME COURT OF THE UNITED STATES

No. 73-6935

MARCEL YOUAKIM, ET AL., APPELLANTS

v.

JEROME MILLER, Individually and as Director of the Department of Children and Family Services, ET AL.

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

March 17, 1975

Mr. Justice Douglas took no part in the consideration or decision of this case.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 574442 157